Federal-State Joint Board on Universal Service; ETC Designations, CC Docket No. 96-45

ETC designation policies should recognize the tangible benefits of CETC designation in the case of fully substitutable services. Both urban and rural consumers benefit from:

- New bundled services;
- New service offerings. In the Juneau and Fairbanks (both defined as rural areas) small business communities, customers had options for fractional T-1s and seasonal offerings for the first time upon GCI's entry into the local market;
- Improved customer service; and
- Competitive pressure to reduce demand on the high cost fund.

For these reasons, GCI urges the Commission to reject arguments meant to frustrate CETC designation without any public interest benefit, specifically:

1. Proposals to impose COLR obligations beyond Section 214(e)

CARRIER OF LAST RESORT IS A BENEFIT, NOT A BURDEN, TO RURAL ILECS.

- COLR as a reason to bar competitively neutral USF distribution policies is a red herring. In a competitive market, new and unbuilt areas actually become more desirable targets for service — both the incumbent and new entrants will compete to serve the area.

- Most rural ILECs benefit greatly from their COLR obligations. For example, under state law, ACS' line extension tariffs require any customer that is more than 1000 feet away from existing facilities to pay the full cost of extending those facilities beyond 1000 feet, and to pay, in advance, four years of basic local service. The European Union also has generally recognized the benefits of COLR-type requirements to ILECs.

- If the customer moves, they lose the prepaid fees, but basic charges beyond the construction fees are retained by ACS. In short, COLR guarantees the ILEC four years of basic local service revenue for merely complying with its state and federal obligations to provide the supported services upon request, providing a significant competitive advantage over other ETCs.

- In fact, COLR is not a pressing concern—GCI only is aware of one instance in the past 25 years when a COLR issue arose with regard to a new service location in the State of Alaska.

- Further, GCI has voluntarily proposed sharing COLR responsibilities in the local and long distance markets in Alaska.

- Finally, because it is difficult or impossible to determine what COLR issues might arise in the future, GCI suggests that these issues be addressed when a specific situation arises, rather than attempting to address them broadly through the ETC designation process.

IMPOSING COLR OBLIGATIONS ON CETCS THROUGH THE DESIGNATION PROCESS WOULD BE INCONSISTENT WITH § 214(e) AND COULD ERECT A BARRIER TO COMPETITIVE ENTRY.

- The FCC expressly rejected proposals to impose COLR as a universal service requirement in the *Universal Service First Report and Order*. This remains good law, for the reasons discussed below.

- First, § 214 requires all ETCs to serve all customers through its own facilities, or its own facilities in combination with resale. To the extent that the ILEC has to serve all customers in its service areas through its COLR obligations, the ETC is under the same requirement pursuant to § 214(e)(1).

- Second, § 214(e)(4) includes exit barriers similar to those imposed by state COLR regulation. For example, if one ETC relinquishes its designation in a service area, the other ETCs in the market must ensure that all customers will continue to be served. The remaining carrier(s) has one year to purchase or construct adequate facilities to meet its ETC obligations.

- Hence, Congress made it clear in § 214(e) that an ETC in a territory served by multiple ETCs should not be required to construct facilities to serve every customer within its territory until one year after the other ETC relinquishes its designation. The Commission therefore cannot lawfully impose a shorter build-out requirement as a condition of ETC designation.

- Likewise, there is no need to impose additional protections to ensure that the CETC will step in as the COLR one year after the ILEC's petition for relinquishment is granted, because such protections would be superfluous — § 214(e)(4) already imposes an identical requirement.

- In fact, concerns about COLR compliance should not be attributed solely to CETCs. In Alaska, for example, it is the ILEC that has refused to extend wireline facilities to customers, relying instead on inferior wireless facilities that fail to comply with minimum infrastructure requirements under state law.

2. Service Areas and Disaggregation

AN ILEC'S CHOICE NOT TO DISAGGREGATE HIGH COST SUPPORT SHOULD NOT CREATE A BARRIER TO DESIGNATIONS OF CETCS.

- In the *RTF Order*, the Commission allowed rural ILECs to disaggregate their high-cost support across two or more zones to alleviate concerns about "cream skimming." However, as the Joint Board notes in its recommendation, most rural carriers chose Path 1 and did not disaggregate support.

- Subsequently, in the *Virginia Cellular* and *Highland Cellular* orders, the Commission refused to designate two wireless carriers competitive ETCs because they only proposed to serve the low-cost study area's of a rural ILEC's wire center. However, in both instances, the rural ILEC chose Path 1, and refused to disaggregate its high-cost support.

- Such an outcome is antithetical to the public interest, because it will allow ILECs to game the universal service system to foreclose the development of competition in rural markets.

    ° Rural ILECs should not be permitted to use disaggregation (or the lack thereof) as a sword and a shield. Current rules permit a rural ILEC that has elected Path 1 at any time to petition a state commission to adopt a disaggregation plan.

    ° Rural ILECs that claim that designation of a CETC would create "cream-skimming" should be required to do so under Path 3. Involvement of the state commission under Path 3, rather than self-certification under Path 2, is critical so that ILECs cannot shift support from the area the CETC seeks to serve on a non-cost-based basis.

3. Benchmark Proposals

- Any benchmark against ETC designations raises an unnecessary barrier to entry, creating presumption against entry. For example, GCI has endured years of litigation to terminate the rural exemption in Fairbanks and Juneau, the second and third largest cities in Alaska, and still only reached resolution through settlement.

- Any support-per-line benchmark would be arbitrary, as concluded by the Joint Board.

- Any support-per-line benchmark invites gaming, whereby cost carriers could increase costs to reach the designated threshold.

- Any support-per-line benchmark protects carriers against competitive incentives for efficiencies.

- Any support-per-line benchmark, which protects carriers, not consumers, is antithetical to the directive in *Alenco* that the goal of universal service support is to benefit consumers, not carriers. Such a policy would do particular violence to the Act in a case like Mid-Rivers, where the carrier enters with USF support dispersed on an equal support basis at the non-rural level, but then by securing designation as a 251(h)(2) incumbent, the entrant not only raises the level of per line support, but at the same time, closes the door behind them against new competitors.

4. Proposals to differentiate support amounts among similarly situated ETCs

- The basis of support is pending before the Joint Board, not the Commission**.** However, it bears noting that equal support is lawful and the only competitively neutral mechanism for distributing high cost support.

- Distributing high cost support on an equal support per line basis among service providers that are substantial substitutes is consistent with § 254(e)'s sufficiency requirement. (Compare with definition of CMRS, which allows states to regulate when CMRS is a substitute for landline for a substantial portion of communications in the state).

  - The CETC may not be the lowest cost provider, so there will not be an excess subsidy if the CETC receives support based on the ILEC's costs.

  - If the CETC is a lower cost provider, then the ILEC will be over-subsidized, to the extent that it receives high cost support beyond the level that an efficient carrier needs to provide universal service at an affordable rate. This violates *Alenco.*

- Distributing equal support among substantial substitutes is competitively neutral.

  - Parties that argue against the provision of the same level of high cost support to ILECs and CETCs confuse competitive neutrality with profit equalization. Competitively neutral policies ensure that the supported services are provided by the least cost provider, whereas profit equalization policies harm consumers by propping up inefficient providers.

  - Calculating high cost support by the same ruler is the only means to replicate the price signals that would occur in a competitive market. By contrast, differential support for ILECs and CETCs will rob more efficient providers of the benefits of their efficiency.

Finally, in the event that the Commission does not pursue a primary line restriction, then it should enforce the original intent of the rules, that support be truly portable among service providers. This result could be implemented by distributing per-line support to ILEC ETCs as it is today to CETCs—limited to lines actually served by the carrier.